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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/206,458	12/07/1998	JOHN A. GREAVES	4532670/6974	5547

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EXAMINER

TATE, CHRISTOPHER ROBIN

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 12/03/2002

27

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/206,458

Applicant(s)
Greaves et al.

Examiner
Christopher Tate

Art Unit
1654



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 16, 2002 and Jun 28, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15, and 18-27 is/are pending in the application.
- 4a) Of the above, claim(s) 18-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15, and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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DETAILED ACTION

Continued Prosecution Application

The request filed on September 16, 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) is acceptable and a CPA has been established. An action on the CPA follows.

The amendment and Declaration filed June 28, 2001 are acknowledged and have been entered. Please note, under Rule 1.126, newly presented claim 22 has been renumbered as claim 27.

Claims 18-23, as instantly amended, are directed to one or more inventions that is/are independent or distinct from the invention originally claimed for the following reasons: Claims 18-23, as instantly amended, read upon one or more non-elected inventions - i.e., upon the invention(s) of Groups II and/or III as set forth in the Restriction requirement of Paper No. 5 (a food preservative for animal feedstuffs and/or an essential oil product), whereas original claims 18-23 read upon the preparation process of Group I. In addition, claims 24-26 remain withdrawn, as being drawn to a non-elected invention, for the reasons of record.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 18-23 are withdrawn (and claims 24-26 stand withdrawn - for the reasons of record) from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Accordingly, claims 1-12, 15 and 27 are presented for examination on the merits.

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Please note that the June 28, 2001 amendment containing a marked-up version of the claims, which supposedly shows all changes made to the claims, fails to accurately show many of the numerous changes that were actually made to the instant claims.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 U.S.C. § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-12, 15 and 27 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Independent claims 1 and 27 recite the new limitations "organic solvent having a boiling point above 22°C" and "organic component which has antioxidant activity that is improved over an organic component extracted in the absence of the organic solvent". Both of the newly recited limitations are deemed new matter as there does not appear to be any literal support for these limitations in the instant specification and applicants did not specifically point to where such support is found therein. Further, please note that the instant specification does not preclude the use of organic solvents having a boiling point below 22°C, including butane (which has a boiling

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point of -0.5°C) and, thus, the instant teachings do not support the exclusion of organic solvents having lower boiling points than that of the newly recited new matter limitation: "having a boiling point above 22°C ".

All other claims depend directly or indirectly from rejected claims and are, therefore, also rejected under U.S.C. 112, first paragraph for the reasons set forth above.

Applicants are required to either cancel the above new matter limitations or to particularly point to full and adequate support in the instant specification for these new matter limitations in the reply to this Office Action.

Please note that removal of the above new matter limitations may prompt reintroduction of one or more of the art rejections of record, with the exception of those art rejections made over the Nicola et al. reference (GB 2,324,050). Applicants' 131 Declaration filed June 28, 2001 obviates this reference as a prior art reference.

Claims 4 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 and 7 are rendered vague and indefinite because the organic solvent "butane" has a lower boiling point than the limitation recited in claim 1 (from which these claims ultimately depend) - i.e., "having a boiling point above 22°C " and, therefore, this solvent is outside the limitations of clm 1 (and of clm 5) which is improper and causes them to be unclear.

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Although not applicable to the above rejections, many of Applicants arguments presented in the amendment filed June 28, 2001 are not understood because they pertain to rejections not of record. For example, applicants argue (beginning on page 4 of their 6/28/01 response) that previous claims 1-16, 20, and 21 were rejected under U.S.C. 112, first paragraph. However, until now, none of those claims (nor any other claim) were ever rejected under U.S.C. 112, first paragraph.

Conclusion

No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Tate whose telephone number is (703) 305-7114. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached at (703) 306-3220. The Group receptionist may be reached at (703) 308-0196. The fax number for art unit 1654 is (703) 308-4242.



Christopher R. Tate
Primary Examiner, Group 1654